



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 25, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-0799

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113727.

The Texas Department of Health (the "department") received an open records request for the department's report of an investigation into certain complaints filed against the Shriners Burn Institute (the "institute") in Galveston, Texas. The requestor in this instance is an attorney representing Shriners Hospitals for Children, and for purposes of this ruling we will assume that the requestor is acting on behalf of the institute. You state that the department has released to the requestor most of the requested report. You contend, however, that portions of the report consisting of medical information derived from the institute's medical records are made confidential under section 5.08 of article 4495b, V.T.C.S. and the common-law right of privacy, and therefore must be withheld from the requestor pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 5.08 of article 4495b, V.T.C.S., provides in pertinent part:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section . . . may not

disclose the information *except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.* [Emphasis added.]

You contend that because the medical information contained in the "Report of Contact" is confidential under article 4495b, the department is prohibited from releasing that information to the institute. We agree that the release of the information at issue is governed by the provisions of the Medical Practice Act, and that the information may be released only in accordance with section 5.08(c) of article 4495b. Consequently, the department may release the medical information at issue to the institute only upon the department's determination that the release would be "consistent with the authorized purposes for which the information was first obtained." Otherwise, the information must be withheld.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/ch

Ref.: ID# 113727

Enclosures: Submitted documents

cc: Ms. Donna Smith Cude
Neel, Hooper & Kalmans, P.C.
1700 West Loop South, Suite 1400
Houston, Texas 77027
(w/o enclosures)

¹Because we resolve your request under the Medical Practice Act, we do not address your common-law privacy arguments.